PETITION NOT PRINTED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 412

PHILIP BOYER, ET AL.,
Petitioners,

VS.

ROBERT GARRETT, ET AL.,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE GRANTING OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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NO ISSUE OF FACT

The petition presents no issue of fact. The District Court—Judge Chesnut, said:

> "I find no material issue of fact in the case presented." 88 Fed. Supp. 353-359.

THE LAW QUESTION

The question of law is this:—Whether segregation of members of the negro race from members of the white race

in the use of the facilities maintained by the City of Baltimore for the playing of basketball, tennis and golf, is legal. The respondents assert, and the petitioners deny, the legality of such segregation.

FACTS

No question of inequality of such facilities for the two races is involved. June 13, 1949, a stipulation was filed in the District Court. Paragraph 23 of that stipulation is:

> "The plaintiffs make no claim that the separate public tennis facilities furnished by the defendants to the negro and white members of the public respectively, including the plaintiffs, were not at the times of the occurrences set forth in the complaint, and are not now, substantially equal."

Paragraphs 13 and 31 of the stipulation are to the same effect with reference to basketball facilities and golf facilities, respectively. Four of the petitioners herein were among twenty-two persons jointly indicted in the Criminal Court of Baltimore City. Seven of the twenty-two, including four of the petitioners herein, were convicted, and judgments based upon said convictions were affirmed by the Court of Appeals of Md. Nov. 17, 1949, in Winkler, et al. v. State, 69 Atl. 2d Series, page 674.

March 27, 1950, this court denied petition for certiorari in that case. On pages 18 to 29 of the Transcript of Record in that case (No. 572, Oct. Term, 1949, Supreme Court of the U. S.) is set out the opinion of the Supreme Bench of Baltimore City denying the defendants' motion for a new trial as to the 5th count of the indictment. Judge Tucker, a member of the Supreme Bench of Baltimore City, delivered the opinion saying, in part:

> "Twenty-two persons were jointly indicted in this case, and seven of them, namely, Stanley Askin,

Leonard Collidge, Irvin Winkler, Warren L. Vestal, Regina Silverberg, Charles M. Swann and Harold Buchman, were convicted by the Court (Judge Moser) sitting as a jury under the first and fifth counts of the indictment. The first count charged the defendants with rioting, and the fifth count charged them with a conspiracy to riot or disturb the public peace.

The defendant, Buchman, is a lawyer and was the Maryland Director of the Progressive Party; and the defendant, Askin, was the State Director of the Young Progressive of Maryland. These organizations had no official connection, but they worked together.

On July 3, 1948, Mr. Askin wrote a letter to Mr. Harold S. Callowhill, Superintendent, Bureau of Recreation of Baltimore City, stating that the Young Progressives of Maryland wanted to hold an interracial tennis tournament at Druid Hill Park on Sunday, July 11, 1948. Mr. Callowhill referred this letter to Mr. Charles A. Hook, Superintendent of Parks of the City, and on July 8, 1948, the latter wrote to Askin advising that his request could not be granted because it was against the policy of the Board of Recreation and Parks to permit the playing of interracial tennis games in the park. The policy of the Board is to permit colored players to use certain designated tennis courts and white players to use others. After Mr. Askin received Mr. Hook's letter, he and Mr. Buchman went to Hook's office, and during the interview that ensued Hook reiterated his statement that the interracial matches could not be held. But, Askin and Buchman expressed their belief that the Board had no right to prevent such matches and stated that in order to test the validity of the Board's policy the Young Progressives would proceed with their plan to conduct interracial games on certain courts designated for white players on Sunday, July 11, 1948, at 2 o'clock in the afternoon.

Prior to the meeting at Hook's office, Askin and the Young Progressives with Buchman's knowledge had

certain circulars prepared for distribution among their members and the public, and one of them, marked State's Exhibit 4, read as follows:

KILL JIM CROW
DEMAND YOUR
RIGHTS.

Organize to smash discrimination in recreational facilities. No law has ever been passed by the City Council stating that Negro and white citizens must use separate park facilities.

On Sunday July 11th at the Druid Hill Clay Tennis Courts near Auchentoroly Terrace and Bryant Avenue (Near the hot houses) promptly at 2 P. M.

Negro and white citizens are going to insist on their lawful rights to use these courts! Be present to lend your support!

Sponsored by: *The Young Progressives of Maryland*
328 N. Charles Street, Plaza 2470.

HENRY WALLACE SAYS:
"JIM CROW IN AMERICA HAS GOT TO GO".

The Young Progressives had arranged with members of the Baltimore Tennis Club, an organization of colored tennis players, to participate in the games to be played on this occasion, and at the appointed time each of several tennis courts became occupied by white and colored players. Soon thereafter the players were ordered by Captain Gaeng and three other officers of the Park Police to leave the courts because interracial matches were prohibited by the Park Board. The players refused to do so, and after a period of about twenty minutes when other policemen had arrived and the players again refused to leave the courts a number of arrests were made by

the police. Among the persons arrested were several tennis players who had sat on the court and were required to be taken bodily to the patrol wagon. Estimates of the size of the crowd that had assembled ranged from 150 to 300 persons and their conduct was rather turbulent according to some witnesses and fairly orderly according to others."

"The evidence shows plainly that the defendants or some of them were guilty of disorderly conduct and disturbance of the public peace, but in our opinion there is no substantial evidence that any of them was guilty of rioting."

The facts stated by Judge Tucker were made the basis of a complaint in the U. S. District Court for the District of Maryland by the petitioners herein against the Mayor and City Council of Baltimore and the members of the Board of Recreation and Parks to enjoin the enforcement of a rule officially adopted providing for the segregation of races in the use of facilities maintained by the City of Baltimore for the playing of basketball, tennis and golf. The District Court—Judge Chesnut, dismissed the complaint. Dec. 30, 1949, he filed a written opinion, which leaves little to be said. 88 Fed. Supp. 353-360. The citations in that opinion, and in the footnotes thereto, include the leading cases on the question of the segregation of the races under the 14th Amendment to the Constitution of the United States. The plaintiffs in that action (petitioners here) appealed to the United States Court of Appeals for the 4th Circuit and that Court, in a per curiam opinion, affirmed the District Court, saying, in part:

"The parties entered into a stipulation that, for the purposes of this case, no contention was made that the facilities and services furnished the different races were not substantially equal. The contention of plaintiffs is that, notwithstanding this equality of treatment, the rule providing for segregation is violative

of the provisions of the Federal Constitution. The District Court dismissed the complaint on the authority of Plessy v. Ferguson, 163 U. S. 537; and the principal argument made on appeal is that the authority of Plessy v. Ferguson has been so weakened by subsequent decisions that we should no longer consider it as binding." 183 Fed. 2d, 582.

It may be remarked in this connection that the principle of law inveighed against by the petitioners did not originate with *Plessy v. Ferguson,* 163 U. S. 537.

Mr. Justice Brown, delivering the opinion of this Court in that case, said, in part:

Page 544:

"The object of the Amendment (14th) was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things, it could not have been intended to abolish distinctions *based upon color,* or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms *unsatisfactory* to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other and have been generally, *if not universally,* recognized as within the competency of state legislatures in the exercise of their *police power.* The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.

"One of the earliest of these cases is that of Roberts v. Boston, 5 Cush. 198 *(decided in 1850)* in which the Supreme Judicial Court of Massachusetts held that the general school committee of Boston had power to make provision for the instruction of colored children in sep-

arate schools established exclusively for them, and to prohibit their attendance upon the other schools * * *. Similar laws have been enacted by Congress under its general power of legislation over the District of Columbia * * *, as well as by the legislatures of many of the states and have been generally, if *not uniformly*, sustained by the courts.

* * * * * *

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"We consider the underlying fallacy of the plaintiff's (petitioner's) argument to consist in the assumption that the enforced separation of the two races stamps the colored race with the badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it * * *. The argument also assumes that social prejudice may be overcome by legislation and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. *We cannot accept this proposition.* If the two races are to meet on terms of social equality, it must be the result of natural affinities—a mutual appreciation of each other's merits and a voluntary consent of individuals. As was said by the Court of Appeals of N. Y. in People v. Gallagher, 93 N. Y. 438, 448, 'This end can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community upon whom they are designed to operate.' (Decided in 1883)." (Italics ours.)

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"A statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and *which must always exist so long as white men are distinguished from the other race* by color—has no tendency to destroy the legal equality of the two races * * *." (Italics ours.)

ARGUMENT

ONLY ONE POINT

In the petitioners' brief, under the heading "Errors Relied Upon", are 5 numbered sentences, and in their petition, under the heading "Reasons Relied Upon for the Allowance of the Writ", are 7 unnumbered paragraphs. In those sentences and paragraphs the respondents are charged, in general language, with violating the 13th, 14th and 15th Amendments to the Constitution of the United States and the Charter of the United Nations. However variously phrased, these charges add up to one proposition, to wit: The Respondents acted illegally in enforcing segregation in the use of the facilities maintained by the City of Baltimore for the playing of basketball, tennis and golf legal? Said the Circuit Court of Appeals:

> "We need not consider arguments based upon the First Amendment or the Charter of the United Nations. The First Amendment manifestly has no relation to athletic contests and there is nothing in the Charter of the United Nations which, if applicable here, is of broader scope than the provisions of the Fourteenth Amendment in forbidding racial discrimination." 183 Fed. 2d, 582.

It may be added that, aside from the fact that the language of the First Amendment to the Constitution of the United States is a limitation upon the power of Congress and not the States, the petitioners did not, as a matter of fact, *peaceably assemble* in Druid Hill Park for the purpose of petitioning the government for a redress of grievances, and the respondents never interfered or attempted to interfere with the petitioners' *peaceable assembly* in said park. On the contrary, in the language of the indictment upon which some of them were duly convicted, they "unlawfully did conspire, combine, confederate and agree together and with each other unlawfully, riotously and tumultuously

to assemble and gather together *to disturb the peace.*" Thus, the petitioners seek to raise a false issue not supported by any facts in this Record.

In one of the paragraphs in their petition, under the heading "Reasons Relied upon for the Allowance of the Writ", it is said:

> "Another reason relied on is that there is no statute, ordinance or written rule decreeing segregation in sports activities in public facilities in Baltimore City."

The petitioners seem to blow both hot and cold. Here they question the *existence* of the rule of the Board of Park Commissioners prohibiting interracial athletic activities in the public parks, and, in their brief, they question the *legality* of such rule. Judge Chesnut disposed of this contention as follows:

> "But in this particular case there is no issue of fact as to *the existence* of a practice or requirement of the Board against interracial athletic activities. The complaint does not *question the existence* of the rule but, on the contrary, asserts it and denies its constitutional validity. And it is this later denial which makes the issue of law in this case. In fact it is only by *reason of the rule* that this court has jurisdiction in the case under Sections 43 and 47 of Title 8, U. S. C. A." (Italics ours.) 88 Fed. Supp. 359.

Moreover, the Stipulation filed shows that, at a meeting of the Board of Park Commissioners on January 20, 1948, the Board passed this resolution:

> "That the policy of the Department of Recreation and Parks of not allowing interracial activities be continued until further study by this Board."

Again, quoting Judge Chesnut:

> "An important feature of the agreed statement of facts is that, for purposes of the question now before

the court, the complainants made no contention that the facilities afforded for the separate races are not substantially equal. This being so, there can be no question but that under Maryland law the Park Board did have the legal authority to require segregation of the races. In *Durkee v. Murphy*, 181 Md. 259, 265 (a case involving segregation of white and negro players on municipal golf courses) Chief Judge Bond, after referring to the relevant sections of the Baltimore City Charter of 1938 (not substantially different from those of the present Charter of 1946) which conferred powers upon the Park Board to make rules and regulations, said:

"'And these provisions must, we conclude, be construed to vest in the Board the power to assign the golf courses to the use of the one race and the other in an effort to avoid any conflict which might arise from racial antipathies, for that is a common need to be faced in regulation of public facilities in Maryland, and must be implied in any delegation of power to control and regulate. There can be no question that, unreasonable as such antipathies may be, they are prominent sources of conflict, and are always to be reckoned with. Many statutory provisions recognize this need, and the fact needs no illustration. 'Separation of the races is normal treatment in this State.' *Williams v. Zimmerman*, 172 Md. 563, 567, 192 A. 353, 355. No additional ordinance was required therefore to authorize the Board to apply this normal treatment; the authority would be an implied incident of the power expressly given.'

"I find no material issue of fact in the case presented." 88 Fed. Supp. 359.

Paragraph 5 of the Stipulation in the present case is, in part, as follows:

"At a meeting of the Board held July 20, 1948, they, with the exception of Wilburt Marsheck, who did not attend the meeting, voted in favor of a resolution that the golf course at Mt. Pleasant Park be used exclu-

sively by negro golfers on Tuesday of each week and by white golfers on all other days of the week; that the golf course at Clifton Park be used exclusively by negro golfers on Wednesday of each week and by white golfers on all other days of the week; that the golf course at Hillsdale Park be used exclusively by negro golfers on Thursday of each week and by white golfers on all other days of the week; and that the golf course at Carroll Park be used exclusively by negro golfers on Monday, Thursday, Friday, Saturday and Sunday of each week and by white golfers exclusively on Tuesday and Wednesday of each week."

In this connection, see Paragraphs 27, 28 and 29 of the Stipulation. The Court will thus see that at *all times* some golf course maintained by the City of Baltimore can be used exclusively by negroes and, likewise, at *all times* some golf course can be used exclusively by whites. In this particular, the facts of this case differ from the recent Florida case of *Rice v. Arnold,* No. 145, October Term, 1950. It seems in that case the City had but one golf course; consequently there are six days of each week in which there is no public golf course open to negro golfers.

Judge Chesnut also tried the case of *Law v. Mayor and City Council of Baltimore, et al.,* 78 Fed. Supp. 346, involving the golf courses maintained by the City of Baltimore. He filed a written opinion in that case in which he said, among other things:

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"Possibly the Board may find a fair solution for the future in continuing to reserve Carroll Park exclusively for negro golfers, but also affording them the opportunity to play at Mt. Pleasant or other municipal courses during certain hours of the day or on one or more days of the week reserved for them exclusively. And if this should be the course found practicable and desirable, it would seem relevant for the Board to con-

sider for that purpose in apportioning time, the presently relatively small number of negro golfers * * *.

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"The number of negro golfers in Baltimore is said to be less than 100; while the white players number 5,000 or more."

The petitioners criticise the conduct of the respondents in connection with the situations disclosed in Paragraphs 34 and 35 of the Stipulation. The Baltimore Municipal Stadum, owned by the City of Baltimore, is under the general jurisdiction of the Department of Recreation and Parks, and is sometimes leased to private athletic clubs or organizations for the playing of football and baseball games therein. Occasionally some of the participants in those games are negroes. For instance, during the annual baseball season, the Montreal Royals, Newark Bears and Jersey City Giants, members of the International Baseball League, play against the Baltimore Orioles, lessees of the Stadium. At times, some of the aforesaid teams may include a negro or two. With reference to this situation, Judge Chesnut said:

"The agreed statement of facts lists a number of real or apparent exceptions to the consistency of the general policy and practice of the Board and its predecessors, but viewing the agreed statement as a whole and interpreting it in accordance with my understanding of the purpose of counsel in presenting the substantial law question, I consider the exceptions to be really immaterial. Instances of some of the exceptions noted are as follows: During the war years and pending construction and improvement of the Carroll Park Golf course theretofore reserved exclusively for Negro golf players (see Durkee v. Murphy, 181 Md. 259, and Law v. Mayor & City Council of Baltimore, 78 F. Supp. 346), they were allowed to play on other municipal golf courses. The Baltimore Stadium is under the control of the Board and at times has been leased to

amateur or professional baseball or football clubs and occasionally a visiting baseball or football team has had a Negro member. Also during the recent war some Cricket matches were played in Druid Hill Park between teams from crews of British ships and the local team consisting mainly of Negro players, but with a few white players. This fact is stated to have been known to the Board of Recreation and Parks but it issued no permits therefor. Certain other instances of interracial athletic activities occurring in Baltimore City, not under the particular jurisdiction of the Park Board, are also mentioned."

Petitioners cite the case of *Hague v. Committee for Industrial Organization,* 307 U. S. 496, 83 Law Ed. 1425. The facts of that case are easily distinguishable from those of the case at bar. In the *Hague* case the Complaint charged tortious invasion by city authorities, pursuant to an *invalid ordinance,* of the Plaintiffs' rights. In the case at bar, Respondents acted pursuant to a *valid rule* of the Board of Park Commissioners, and Petitions by criminal acts, sought to set at naught that rule. Whatever personal hardship, mental anguish or damage were suffered by Petitioners, were due directly to their own illegal and criminal acts. Neither the Constitution of the United States nor any law of the United States protects the Petitioners from the consequences of their criminal conduct, of which some of the Petitioners stand convicted before this Court by the Supreme Bench of Baltimore City and the Court of Appeals of Maryland. *Winkler, et al. v. State,* decided by the Court of Appeals November 17, 1949, 69 Atl. Rep., 2d., 674. The Supreme Court denied certiorari.

Petitioners cite *Terminello v. Chicago,* 337 U. S. 1, 93 Law. Ed. 865.

In that *case* Chief Justice Vinson, Mr. Justice Frankfurter, Mr. Justice Jackson and Mr. Justice Burton dis-

sented. Mr. Justice Jackson, in his dissent, wrote, among other things:

> "In the long run, maintenance of free speech will be more endangered if the population can have no protection from the abuses which lead to violence * * *. This court has gone far toward accepting the doctrine that civil liberty means the removal of all restraints from these crowds and that all local attempts to maintain order are impairments of the liberty of the citizen. The *choice is not between order and liberty,* it *is between liberty with order and anarchy without either.* There is danger that if the court does not temper its *doctrinaire logic* with a little *practical wisdom,* it will convert the constitutional Bill of Rights into a suicide pact." (Italics supplied.)

Petitioners cite *Lawrence v. Hancock,* 76 Fed. Supp. 1004. They can find no comfort in that decision. On the contrary, it supports the position of the Respondents. In that case the court authorized an injunction restraining the municipal authorties "from again denying (a negro) plaintiff the right to use the swimming pool at any time when the pool is open for public use, *unless* there *be provided by the City other and equal swimming pool facilities available to persons of the negro race."* 76 Fed. Supp. 1010.

To the same purport is *Lopez v. Secombe,* 71 Fed. Supp. 171, cited by Petitioners. There it was decided, the petitioners — Mexican descent — "are entitled to *such equal accommodations,* advantages, prvileges and to *equal rights and treatment* with other persons as citizens of the United States in the use and enjoyment of the facilities of said park and playground, etc."

It would be tedious to mention all the cases referred to in Petitioners' brief. None of them, when properly read and construed, is contrary to Judge Chesnut's decision. As Judge Chesnut said:

"Nor, so far as I have been able to ascertain, is the present contention (of Petitioners) *supported by any judicial decisions, federal or state.*" (Italics supplied.) 88 F. Supp. 355.

SEGREGATION LESSENS OCCASIONS FOR CONFLICT AND DISTURBANCES BETWEEN MEMBERS OF THE WHITE RACE AND MEMBERS OF THE NEGRO RACE.

The Petitioners' Brief is not limited to a discussion of the issue but includes quotations to the effect that segregation of the races has failed. In Note 4 to his Opinion, Judge Chesnut invites attention to Judge Paul's able discussion in the recent segregation case of *Simmons v. Atlantic Greyhound Corp.*, 75 Fed. Supp. 166, 175. Stated there are the views of practical men living daily with the segregation problem in parts of the South. They express the view that segregation lessens the occasions for conflict, arguments, altercations and disturbances among the whites and Negroes and is not arbitrary nor unreasonable. Judge Paul spoke, in part, as follows:

"I am unable to say that as of today the prevailing practice in the southern states of the separation of white and colored passengers on common carriers is arbitrary and without reasonable basis when viewed in the light of the responsibility resting on such carriers to assure that traveling on their conveyances shall, so far as possible, be free from disorder, disturbance or unpleasant incident. Among the witnesses in this case were the President of the defendant company and the Presidents of two other bus companies operating in Virginia, North Carolina and other southern states. There was testimony also from public officials of the states of Virginia and North Carolina whose duties related to the supervision of motor carriers operating in those states. *All of these witnesses agreed in the opinion* that the *separation of white and colored persons* traveling by bus within the territory named was desirable and in *the interest of both races.* There is no

ground for charging these witnesses personally with the harboring of racial prejudices and they testified with evident sincerity in expressing the view, *born of their observation and experience,* that the seating of white and colored passengers indiscriminately would increase the *occasions for arguments, altercations and disturbances* among passengers leading to annoyance, disorder and possible danger to passengers of both races. The opinion of these men whose activities are concerned with the operation of these carriers cannot be ignored in determining whether the rules adopted for the seating of passengers are reasonable ones. *No matter how much we may deplore it, the fact remains that racial prejudice and antagonisms do exist and that they are the source of many unhappy episodes of violence between members of the white and colored races.* If it is the purpose of the defendant here to lessen the occasions for such conflicts by adoption of a rule for the separate seating of white and colored passengers, this court cannot say that such a rule is purely arbitrary and without reasonable basis."

In practice, the doctrine of *Plessy v. Ferguson,* 163 U. S. 537 has worked well and in the interest of both races. It is not outmoded in the view of the men who live in the sections where condition makes segregation necessary. No public mischief has been caused by it and there is no condition now demanding a change. Why change a practice which makes for peace and good order for a practice which those who know the conditions in the seventeen states where segregation is enforced believe would produce disorder and bloodshed? Witness the disorder and bloodshed which followed the opening of the same swimming pool to both races in the District of Columbia, St. Louis, Missouri, and Youngstown, Ohio, last summer.

In the voluminous literature on this subject, Dr. Charles W. Eliot, former President of Harvard University, is quoted

as saying, when addressing the Twentieth Century Club of Boston on the consequences of the decision in the case of *Berea College v. Kentucky*, 211 U. S. 45:

> "If the numbers of whites and blacks were more nearly equal (in Boston) we might feel like segregating the one from the other in our own schools * * *.
>
> "Perhaps if there were as many Negroes here as there, we might think it better for them to be in separate schools. At present Harvard has about 5,000 white students and about 30 of the colored race. The latter are hidden in the great mass and are not noticeable. If they were equal in numbers or in a majority, we might deem a separation necessary."

After a tour of the South, Dr. Eliot commented:

> "The complete segregation of the colored people does not seem to me necessary in the Northern states, or wherever the proportion of Negroes is small. It is unnecessary, for example, in the public schools of Boston and Cambridge. If however, in any Northern state the proportion of Negroes should become large, I should approve of separate schools for Negro children."

"Respect for continuity in Law, where reasons for change are wanting, alone requires adherence to" previous well considered decisions. "Especially ought the Court not needlessly reinforce the instabilities of our day by giving fair ground for the belief that Law is the expression of chance —for instance, of unexpected changes in the Court's composition and the contingencies in the choice of successors." Mr. Justice Frankfurter, whom Mr. Justice Jackson joins, dissenting in *U. S. v. Rabinowitz*, decided February 20, 1950, U. S. Supreme Court, Law. Ed. Advance Opinions, Vol. 94, page 423.

PETITIONERS HAVE SUFFERED NO WRONG AT THE HANDS OF THE RESPONDENTS.

Petitioners are twenty-one individuals, some white and some negroes, some adults and some minors—the latter easily influenced by persons having an ax to grind. They claim to be dissatisfied with some decisions of the highest courts of their country interpreting the Constitution of the United States and some of its amendments. In July, 1948, some of the Petitioners decided to put these decisions to a test, not by peaceful means, but by force. They were advised against this by Mr. Hook, representing the Respondents. He suggested that they make the test by the peaceful procedure of the courts, but their heady leaders replied that they would proceed in their own way, and so they did. Some of them, in the language of the indictment, "unlawfully did conspire, combine, confederate and agree together and with each other unlawfully, riotously and tumultuously to assemble and gather together to disturb the peace." Seven were convicted and sentenced to various terms in the House of Correction and fined. The sentences were suspended and they were placed on probation for two years. They appealed, but the Court of Appeals of Maryland affirmed their conviction. *Winkler v. State*, 69 Atl. 2d 675, 680. The Supreme Court denied Writ of Certiorari.

Petitioners have sued the Respondents in the United States District Court for the District of Maryland demanding a total of over One Million Dollars damages. The Complaint charges that the Respondents were the cause of the unpleasant experiences suffered by the Petitioners. The record shows that whatever inconveniences Petitioners have suffered were the result of their own criminal misconduct. Their complaint is without merit either in law or in equity. The District Court dismissed the Complaint.

88 Fed. Supp. 353. The United States Court of Appeals for the Fourth Circuit affirmed the District Court. 183 Fed. 2d, 582.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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